Supreme Court, U.S.
FILED
SEP 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-5840

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

EDWARD McNAMARA,

Appellant,

v.

COUNTY OF SAN DIEGO
DEPARTMENT OF SOCIAL SERVICES,

Appellee.

On Appeal From The Court Of Appeal Of The State Of California Fourth Appellate District, Division One

BRIEF AMICUS CURIAE OF THE NATIONAL COMMITTEE FOR ADOPTION IN SUPPORT OF APPELLEE

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AUTHORITY FOR BRIEF

This amicus curiae brief is filed pursuant to Supreme Court Rule 36.2, with accompanying written consent of both parties, in support of appellee.

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INTEREST OF AMICUS CURIAE

The National Committee For Adoption ("NCFA") is a nationwide, charitable organization, formed in 1980, with headquarters in Washington, D.C. NCFA is comprised of numerous private adoption agencies and individuals interested in adoption from nearly every state in the country. Its fundamental objective is to promote adoption by encouraging sound adoption policies and practices. NCFA is involved in the accreditation of private adoption agencies, monitors legal developments in the adoption field, gathers and disseminates statistics and practical information regarding adoption, and counsels with individuals and agencies concerning pregnancy, out-of-wedlock births, infertility, and other matters related to adoption. NCFA does not purport to advance the interests of only natural mothers or fathers, or of only adopted children or adoptive parents. Rather, NCFA advocates a balanced, informed, and fair consideration of the competing rights and interests of all concerned.

This case is of particular concern to NCFA because a ruling in favor of the appellant unwed father would create in all such fathers an absolute right to veto the adoption of their offspring without regard to their true relationship with their child or to the best interests of the child. Such a result would seriously damage the adoption process by deterring relinquishment of out-of-wedlock infants for whom adoption is the best alternative, by delaying the adoptive placement, and by discouraging adoptive parents from coming forward to participate in the process. Most damaging in this case would be the psychological and emotional harm to the adoptive child and parents, who have been a family now for seven years.

Appellant's alternative request for visitation rights is equally threatening because it would alter the traditional form of adoption beyond recognition. The essential elements of exclusivity, finality, and normalcy would be sacrificed in the quest for supposed equity.

NCFA here respectfully attempts to provide the Court with information and insight to demonstrate that the decision of the state court, leaving the adoptive family intact, should be affirmed.

SUMMARY OF ARGUMENT

The law, as set forth in decisions of this Court, does not require the consent of all unwed fathers to the adoption of their newborn children. Unless an unwed father timely develops a substantial relationship with his child, or otherwise manifests in a prescribed manner his paternal commitment to the child, the child may be adopted with the exclusive consent of the mother. The best interests of the child should not be sacrificed in a quest for precise equality of parental rights.

To grant all unwed fathers a veto power over the adoption of their offspring, without regard to the child's best interests or to the father's actual paternal relationship and demonstrated commitment to the child, would unnecessarily delay, complicate, and impede the adoption process. Unwed mothers would choose less desirable alternatives in order to avoid or circumvent the adoption system; they would settle for premature or undesired parenting; more babies would be aborted, placed in indefinite foster care, taken out of the country for adoption, or illegally marketed; adoptive parents would choose not to adopt or would be threatened in their existing adoptive relationships; and social costs and personal tragedy would increase.

Appellant's request for visitation rights should be denied because visitation would be contrary to the nature of adoption, and appellant has no pre-adoption relationship with the child that justifies preservation.

ARGUMENT

I. EQUAL PROTECTION DOES NOT REQUIRE THAT ALL UNWED FATHERS OF *NEWBORNS* BE AFFORDED AN ADOPTION VETO POWER EQUAL TO THAT OF UNWED MOTHERS OR "PRESUMED FATHERS."

Appellant argues that he is entitled to the same right of consent to the adoption as that vested by statute in the child's mother and in presumed fathers. (Appellant's Br. at 30-35.) However, long-settled law and public policy are to the contrary.

A. The Law

From earliest times, the law has distinguished between the legal rights of unwed mothers and fathers with regard to custody and adoption of their children born out of wedlock. At common law, an out-of-wedlock child was regarded as the "son of no one." *See generally* H. Clark, *The Law of Domestic Relations in the United States*, 149-52 (2d ed., Student ed. 1987). The common law recognized the mother's exclusive, primary right to custody of the child based on the fact that the child was born into her custody and on the presumption that the mother was a better custodian than the putative father. *Id.* at 197. This presumption was "based upon the ease with which the mother could be identified and located, the obligation normally placed by society on the mother to care for and raise her children, and the strength of the bonds of love and affection assumed to exist between mother

and child." Comment, "Delineation of the Boundaries of Putative Fathers' Rights: A Psychological Parenthood Perspective," 15 Seton Hall L. Rev. 290, 295 (1985). These principles carried over into adoption statutes, the majority of which required the consent of only the mother as a prerequisite to the adoption of an out-of-wedlock child. The primary objectives of such statutes are to further the welfare of out-of-wedlock children and to encourage marriage and the formation of family units. *Id.* at 296-97.

In *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court held that unwed fathers who have an established paternal relationship with their children are constitutionally protected in that parental interest and cannot be deprived of custody of their children without notice and an opportunity to be heard. However, in *Stanley* the Court dealt with a father who had lived with the children's mother for 18 years; who had "sired and raised" his children, *id.* at 651; and who had demonstrated and developed a parental interest "in the companionship, care, custody, and management" of his children, *id.* As subsequent cases demonstrate, those same constitutional protections need not be accorded unwed fathers whose relationship with their offspring is purely biological.

For example, in *Quilloin v. Walcott*, 434 U.S. 246 (1978), this Court upheld the adoption of an out-of-wedlock child over the objection of the unwed father because the father had "never exercised actual or legal custody over his child, and thus ha[d] never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child." *Id.* at 256. In designating which fathers have a right of consent to the adoption of their children, a state is "not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child." *Id.* Conversely, as decided in *Caban v. Mohammed*, 441 U.S. 380 (1979), a state may not withhold the right of consent from an unwed father whose long-term relationship with his children is "substantial," *id.* at 387, and "comparable to that of the mother," *id.* at 389. However, the *Caban* Court emphasized that its holding was based on the "significant paternal interest" manifested by the father, *id.* at 394, and noted that there would be sufficient justification to withhold the right of consent from a father who has developed no such relationship, such as the unwed father of a newborn child.[1]

Most recently, in *Lehr v. Robertson*, 463 U.S. 248 (1983), the Court upheld a statute that accorded

[1] The *Caban* Court stated:

> Even if unwed mothers as a class were closer than unwed fathers to their newborn infants, this generalization concerning parent-child relations would become less acceptable as a basis for legislative distinctions as the age of the child increased. [*Id.* at 389.]
>
> . . . .
>
> Even if the special difficulties attendant upon locating and identifying unwed fathers at birth would justify a legislative distinction between mothers and fathers of newborns, these difficulties need not persist past infancy. . . . In those cases where the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause precludes the State from withholding from him the privilege of vetoing the adoption of that child. [*Id.* at 392.]

The dissenting opinions of Justices Stewart and Stevens develop the basis for distinction between the consent rights of mothers and fathers of out-of-wedlock newborns, and both emphasize that the *Caban* majority opinion does not question the validity of that distinction. *Id.* at 399, 409, 416.

unwed mothers a right of consent to the adoption of their children, but which withheld the right of consent from unwed fathers unless they timely registered their paternity or otherwise manifested their interest and commitment by any of several prescribed means. The Court emphasized that "the rights of the parents are a counterpart of the responsibilities they have assumed." *Id.* at 257. "When an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' " his interest and rights acquire substantial constitutional protection. *Id.* at 261. But a mere "biological link" to the child merits no such protection, *id.*, and if the father fails to grasp the opportunity to develop a protected relationship, "the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie." *Id.* at 262. Since the father in *Lehr* had "never established a substantial relationship with his daughter," he and the mother were not in fact similarly situated with regard to the child, *id.* at 267, and the State was not precluded "from according the two parents different legal rights," *id.* at 268.[2]

[2] As this Court has noted in a different context, "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner v. Texas*, 310 U.S. 141, 147 (1940). The differences between men and women with regard to the birth and care of out-of-wedlock children are evident. *See Caban, supra*, 441 U.S. at 404-05 (Stevens, J., dissenting). As observed in *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 471 (1981):

> We need not be medical doctors to discern that young men and young women are not similarly situated with respect to the problems and risks of sexual intercourse. Only women may become pregnant, and they suffer disproportionately the profound physical, emotional, and psychological consequences of sexual activity.

Since the appellant unwed father in the present case developed no substantial relationship with his daughter and failed to take the available actions that would have guaranteed him a right of consent to the adoption, the statute did not operate to deny equal protection. Appellant was afforded a hearing at which adoption was found to be in the child's best interests. This Court must reject appellant's quest to synchronize the adoption consent rights of unwed parents at the expense of the child's best interests. Equal consent rights would be hollow and meaningless if allowed to override the best interests of the child.[3]

B. Public Policy

This case concerns the constitutionality of the methods by which states attempt to deal with one of the most serious social problems of our day—the rising number of out-of-wedlock births. In 1982, the most recent year for which comprehensive statistics are available, 715,227 children were born to unmarried mothers, comprising nearly 20 percent of all live births in the United States. National Committee For Adoption, *Adoption Factbook--United States Data, Issues, Regulations and Resources* 103 (Washington, D.C. 1985) (hereinafter *Adoption Factbook*). During the

[3] It is not enough for an unwed father merely to step forward and object to the adoption. The father may be unfit to assume parental rights and responsibilities. *See In the Interest of K*, 535 S.W.2d 168 (Tex. 1976), *cert. den.*, 429 U.S. 907 (1976). His commitment and capabilities may be lacking. *See Travis County Child Welfare Unit v. Vance*, 566 S.W.2d 112 (Tex. Civ. App. 1978); *In the Interest of C D V* , 589 S.W.2d 543 (Tex. Civ. App. 1979) (father in penitentiary).

same year, there were 141,861 total adoptions. The vast majority of unrelated adoptions were children born out of wedlock. *Id.* at 102; Office of Population Affairs, U.S. Dept. of Health and Human Services, *The Adoption Option: A Guidebook For Pregnancy Counselors* 15 (1987) (hereinafter *Adoption Option*). On the other side of the adoption picture stand approximately 2 million married couples who are infertile, comprising about 15 percent of all married couples, many of whom have waited years on long adoption waiting lists. *Adoption Option, supra*, at 15; Interagency Task Force on Adoption, *America's Waiting Children: A Report to the President from the Interagency Task Force on Adoption*, 9, 33 (Washington, D.C., March 1988) (hereinafter *America's Waiting Children*). Thus, adoption is a vital process and means by which society's most helpless and needy members are joined with anxious and loving parents to satisfy the needs of both. Adoption represents a valuable option for unwed mothers to assist them in planning for their own lives as well as for the best interests of their children.

Requiring the unwed father's consent to adoption in cases such as this would unnecessarily burden and complicate this laudable process. As Justice Stewart noted in his *Caban* dissenting opinion, "the consent of only one parent should ordinarily be required for adoption of a child born out of wedlock. The mother has been chosen as the parent whose consent is indispensable. A different choice would defy common sense." 441 U.S. at 395. Three other members of the *Caban* Court joined in that view:

> Most particularly, these differences [between men and women] justify a rule that

> gives the mother of the newborn infant the exclusive right to consent to its adoption. Such a rule gives the mother, in whose sole charge the infant is often placed anyway, the maximum flexibility in deciding how best to care for the child. It also gives the loving father an incentive to marry the mother, and has no adverse impact on the disinterested father. Finally, it facilitates the interests of the adoptive parents, the child, and the public at large by streamlining the often traumatic adoption process and allowing the prompt, complete, and reliable integration of the child into a satisfactory new home at as young an age as is feasible. Put most simply, it permits the maximum participation of interested natural parents without so burdening the adoption process that its attractiveness to potential adoptive parents is destroyed.
>
> This conclusion is borne out by considering the alternative rule proposed by appellant. If the State were to require the consent of both parents, or some kind of hearing to explain why either's consent is unnecessary or unobtainable, it would unquestionably complicate and delay the adoption process. [441 U.S. at 407-08, Stevens, J., dissenting.]

Unnecessary delay of the adoption undermines the entire statutory scheme by lessening the chances of adoption and depriving the child of early and uninterrupted bonding to its parents. *Lehr, supra*, 463 U.S. at 265; *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502, 513-14 (1982); *Wells v. Children's Aid Society*, 681 P.2d 199, 203 (Utah

1984).[4] The adverse psychological and emotional impact on the child caused by delay is unquestioned. Bonding with adoptive parents is either totally lost, if the child is in foster care, or weakened by the adoptive parents' uncertainty in the situation. Goldstein, Freud, and Solnit, *Beyond The Best Interests of The Child* 22 (The Free Press, 1979) (hereinafter *Best Interests*). Beyond early infancy, a child in foster care "feel[s] the impermanency and insecurity of the arrangement which clashes with his need for emotional constancy." *Id.* at 25. Accordingly, "to avoid irreparable psychological injury, placement, whenever in dispute, must be treated as the emergency that it is for the child." *Id.* at 43.[5] While unwed parents fight

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[4] As one scholar has noted:

> [T]hose concerned about the welfare of an illegitimate infant cannot keep the child indefinitely in limbo, waiting to see what "functional equivalents" of marriage the father will demonstrate if he is given plenty of time. It is not difficult to sense the risks to a child in such circumstances, knowing as we do how much every child needs a sense of continuity and stability in the child-parent relationship. Quilloin's waiting child is a vivid symbol of the way all persons wait in a noncommittal relationship, whether child or adult, at risk in a sea of uncertain expectations.

Hafen, "The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests," 81 Mich. L. Rev. 463, 498-99 (1983).

[5] *See also* Buchanan, "The Constitutional Rights of Unwed Fathers Before and After *Lehr v. Robertson*," 45 Ohio St. L.J. 313, 364 (1984) (A child's "need for early assurance of permanence and stability is an essential factor in the constitutional determination of whether to protect a parent's relationship with his or her child.").

over consent to the adoption, their child joins the 274,000 children already in foster care, and adds to what is nearly a billion dollar burden of funding the care. *Adoption Factbook, supra*, at 42-43; *see also In re Adoption of Malpica-Orsini*, 36 N.Y.2d 568, 331 N.E.2d 486, 489-90 (1975).

Requiring the unwed father's consent to the adoption also threatens the mother's right of privacy by inducing unwanted disclosure of her and the father's identity. *Lehr, supra*, 463 U.S. at 264; *Caban, supra*, 441 U.S. at 408-09 n.17 (Stevens, J., dissenting). More devastating to the adoption process and the child is that to avoid disclosure and conflict, the mother may simply withhold the child from adoption and raise the child herself against her wishes and best judgment, thus foreclosing the child's opportunity for a better life, as well as reducing the number of children available to potential adoptive parents. *Adoption Factbook, supra*, at 18; *Adoption Option, supra*, at 13.

The President's Interagency Task Force on Adoption identified the requirements of notice to or consent of uninterested fathers as one of the major barriers to adoption in this country:

> The father of the baby may delay or cause an adoption plan to be cancelled, even when he does not intend to raise the baby himself or has provided no financial or emotional support before or after the baby's birth. [*America's Waiting Children, supra*, at 20.]

The Texas Supreme court, in upholding a statute that accorded unwed mothers preferred parental status with regard to adoption of their out-of-wedlock children, similarly observed:

> To classify [the unwed father] as a parent simply because he is the biological father would give him a powerful club with which he could substantially reduce the options available to the unmarried mother.

In the Interest of T.E.T., 603 S.W.2d 793, 797 (Tex. 1980).[6]

This forced retention of out-of-wedlock babies by their unwed mothers has a lasting detrimental impact on the mother, the baby, and society as a whole. Statistics show that young unwed mothers who relinquish their children for adoption advance further educationally and economically, are more likely to subsequently marry, and are less likely to receive public assistance than unwed mothers who keep and raise their babies themselves.[7] "It has long been accepted that illegitimate children whose parents never marry are 'at risk' economically, medically, emotionally, and educationally." *Lehr, supra*, 463 U.S. at 266 n.25. By

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[6] Experience demonstrates that many unwed fathers withhold adoptive consent solely to harass the mother, by forcing her to keep the baby against her will, or to maintain contact and coerce marriage with the mother, and that mothers, faced with uncertainty regarding finality of the adoption or with the possibility that the father may obtain custody, will simply keep their babies. *See Caban, supra*, 441 U.S. at 407 n.13; Note, "The Putative Father's Due Process Rights to Notice and a Hearing," 1986 B.Y.U. L. Rev. 1081, 1093-94 n.47.

[7] 77 percent of mothers who relinquish their babies completed high school, as compared to 60 percent of those who kept their babies. 18 percent of mothers who relinquished were classified as "poor," as compared to 40 percent of mothers who did not. The percentage of women who received some form of public assistance was twice as high among women who kept their babies. *Adoption Factbook, supra*, at 12, 58.

contrast, women who adopt children are more likely to be married, older, better educated, and better-off financially than mothers who keep and raise their illegitimate children themselves. *Adoption Factbook, supra*, at 55, 62-63. Accordingly, adopted children enjoy more educational and socioeconomic advantages than children who remain with their unmarried birth mothers. *Id.* at 12, 62.

In order to avoid unreasonable notice and consent requirements on the one hand, and the adverse consequences of keeping and raising their babies on the other hand, many unwed mothers may be forced to choose even less desirable alternatives. A growing choice for many unwed mothers is abortion. The President's Task Force on Adoption reported abortion as the number one barrier to adoption, with teenage mothers involved in nearly one-third of the 1,573,920 abortions in 1982. *America's Waiting Children, supra*, at 17; *Adoption Factbook, supra*, at 18. It is ironic, to say the least, that an unwed mother has the exclusive power over the life or death of her child, with the right of abortion, but, according to appellant, has no similar control when it comes to adoption.

While adoption is clearly an alternative to abortion, the choice is not viable where, as appellant claims, the father can upset the mother's well-considered plan by withholding consent. When adoption could provide a positive solution that meets the needs of all parties, the result may instead be coerced abortion to avoid the problematic situation described in *Roe v. Wade*, 410 U.S. 113, 153 (1973):

> Maternity, or additional offspring, may force upon the woman a distressful life and future.

> Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved.

An unwed mother considering abortion or adoption is not likely to choose adoption if conflict with the father is the price she pays for choosing life for the baby.

Unwed mothers who do give birth are turning more frequently to independent adoption arrangements in which the legal requirements pertaining to the unwed father may be more easily circumvented.[8] As more rights are accorded to the unwed father, the mother becomes more likely to engage in deception to protect the welfare of the baby. Mothers either withhold the father's identity, falsely declare it as "unknown," or use a current boyfriend to pose as the father and sign the consent to adoption. When the baby's best interests are at stake, there is little overriding incentive to be honest in identifying the father. *See* 1986 B.Y.U. L. Rev., *supra*, at 1093-94.

Independently arranged adoptions more and more frequently result in removal of out-of-wedlock infants to foreign countries to avoid the strictures of domestic adoption law. As a consequence, those babies lose

[8] The number of independently arranged adoptions increased to 33 percent of unrelated adoptions in 1982. *Adoption Factbook*, *supra*, at 104; yet studies show that the failure rate of such adoptions is twice as high as for agency adoptions, *id.* at 47.

their American citizenship and the opportunities of being reared in this country. Independent adoptions are also more apt to lead to exploitation of the mother and baby or to illegal placements:

> Some of the ugliest disclosures of our time involve black marketing of children for adoption. One need not be a clairvoyant to predict that the grant to unwed fathers of the right to veto adoptions will provide a very fertile field for extortion. . . . While it may appear, at first blush, that a father might wish to free himself of the burden of support, there will be many who will interpret it as a chance for revenge or an opportunity to recoup their "losses". [*In re Adoption of Malpica-Orsini*, *supra*, 331 N.E.2d at 490.]

Finally, what of the impact on the child and the adoptive parents if one of the biological parents is permitted to arbitrarily revoke or dispute consent? The terrible and lasting psychological and emotional injury to the child caused by interrupting a bonded, loving parent-child relationship is well documented. *See Best Interests*, *supra*, at 31-52. The evidence to that effect in this case is substantial and convincing. *See* Joint Appendix pp. 13-20. In addition, as the number of infants available for adoption decreases, more and more couples resort to foreign adoptions, which increased by 46 percent from 1982 to 1984. *Adoption Factbook*, *supra*, at 14, 104. Many other couples considering adoption "will be dissuaded out of fear of subsequent annoyance and entanglements." *In re Adoption of Malpica-Orsini*, *supra*, 331 N.E.2d at 489. Those couples who assume the risk and develop an interdependent family relationship with an adopted

child have a constitutionally protected interest in continuing the relationship. *See Smith v. Organization of Foster Families For Equality and Reform*, 431 U.S. 816, 843-44 (1977). If that protected adoptive relationship is subsequently terminated, the adoptive parents' emotional involvement, time, and expense go for naught, and other couples will obviously be deterred from adopting. *See Wells v. Children's Aid Society, supra*, 681 P.2d at 203. The *Wells* court accurately observed:

> If infants are to be spared the injury and pain of being torn from parents with whom they have begun the process of bonding and if prospective parents are to rely on the process in making themselves available for adoptions, such determinations [of who will assume the parental role] must also be final and irrevocable. [*Id.* at 206-07.]

II. APPELLANT'S ALTERNATIVE REQUEST FOR VISITATION RIGHTS MUST BE REJECTED AS CONTRARY TO THE NATURE AND FUNCTION OF ADOPTION AND BECAUSE HE HAS NO ESTABLISHED RELATIONSHIP WITH THE CHILD.

Appellant argues that because "[i]t is doubtful that [he] would get custody at this time," he should be awarded visitation rights. (Appellant's Br. at 45.) However, such an award would destroy the integrity and essence of adoption as we know it, would be contrary to the best interests of the child, would violate the wishes of the relinquishing biological mother, and would violate the rights of the adoptive parents.

Adoption is the legal process by which permanent and exclusive custody of a child is transferred from biological parents to adoptive parents. The adoption

terminates all rights and responsibilities of the biological parents respecting the child and irrevocably bestows those rights and responsibilities on the adoptive parents. The adoption severs all legal ties between the child and the biological parents, and the child assumes the status of the adoptive parents' natural offspring. *Adoption Factbook, supra*, at 10; *America's Waiting Children, supra*, at 5; *Adoption Option, supra*, at 11; Comment, "Visitation After Adoption: In the Best Interests of the Child," 59 N.Y.U. L. Rev. 633, 635, 640-42 (1984).

Awarding visitation rights to parents of out-of-wedlock children adopted at infancy would necessitate departure from traditional and legal confidentiality of adoption records. The reasons for closed adoption records are sound and historically proven: (1) to preserve the privacy of birth parents' and their families; (2) to protect the adopted child from potentially disturbing facts surrounding his birth; (3) to enhance the child's feeling of permanency and the adoptive family's stability; and (4) to allow adoptive families the uninterrupted opportunity to bond themselves to their adopted child. *Adoption Factbook, supra*, at 65. Each of these ends would be undermined by forced visitation. *See Best Interests, supra*, at 116-21. It is the right of the custodial parents, not of the courts, to determine if and when visitation with a biological parent would be appropriate. *Id.* at 117.

Even those who advocate mixing visitation with adoption acknowledge that "the goal of visitation is to preserve and encourage a relationship that is beneficial to the child, not to start a new one." Comment, *supra*, 59 N.Y.U. L. Rev. at 645. "Unlike an infant, the older child has developed emotional and psycho-

logical ties with natural family members that may affect her adjustment to new surroundings." *Id.* at 660. The primary premise for post-adoption visitation is the existence of a substantial pre-adoption relationship, *id.* at 664, absent which visitation would be unjustified:

> When a noncustodial relative wants visitation rights, it should not be presumed that a substantial relationship exists. The goal of visitation is to encourage and preserve a relationship, not to start a new one. *If there has been no previous relationship, the relative is just like a stranger, and the adoptive parents should have control over the child's contact with him.* In seeking contact, the relative may not even have the child in mind; rather, he may be experiencing guilt and a sense of loss from the absence of a relationship. Neither of these feelings suggests that visitation is necessary for the child's welfare. [*Id.* at 665, emp. added.]

In the present case, the adopted child was relinquished and placed as an infant. Appellant had no substantial pre-adoption relationship with her. Accordingly, there is no basis or justification for an award of forced visitation. If, when the child is grown, she develops an interest in meeting her biological parents and developing a relationship with them, mutually-desired meetings may be arranged through the state adoption registry available in California. Until that time, as research shows, Katie would have a more positive self-concept and a more positive feeling toward adoption and her adoptive family without visitation by her biological father. *See Adoption Factbook, supra,* at 66.

CONCLUSION

Based on the foregoing, the National Committee For Adoption strongly urges the Court to affirm the decision of the lower court.

DATED: September 1, 1988.

Respectfully submitted,

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